IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 3415 of 2006.
Date of Decision: September 08, 2006.

Sarbhu & Anr.

....**Appellants.**

through
Mr. Akshay Bhan, Advocate

Versus

Rampat & Ors.

...**Respondents**

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This Regular Second Appeal has been preferred by the defendants against whom a suit for declaration and permanent injunction has been decreed by both the Courts.

[2]. The appellants are the legal representatives-cum-successors in interest of Mata Din (since deceased). For the sake of clarity, the respondent-plaintiffs are referred to as “Prabhu and others”.

[3]. There are two sets of agricultural land, one situated within the revenue estate of village Fatehpuri Pipa and the other within the revenue estate of village Daruhera, both in District Rewari. Prabhu and others were *Gair Marushi* tenants over the land situated in village Fatehpuri Pipa whereas Mata Din was *Gair Marushi* tenant over the land situated in village Daruhera. Both the parties acquired occupancy rights in respect of the

pieces of land under their possession and in accordance with the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953. Thereafter, there was an exchange of land between Mata Din on the one hand and Prabhu and others on the other hand. Mata Din, however, filed a civil suit for possession (No.488 of 1971) titled as Mata Din v Sultan Singh & Ors. in the Civil Court at Rewari claiming possession of the land measuring 90 Kanals 19 Marlas situated within the revenue estate of village Daruhera, District Rewari. Prabhu and others contested the aforesaid suit and took the following plea in their written statement:-

> "That parties are member of one family that agricultural land of the defendant one Parbhu son of Sh. Khubi r/o Daruhera is situated in the revenue estate of village Fatehpuri Pipa, Tehsil Rewari though the plaintiff was not the owner of the land situated in village Daruhera and he was not having any right, title or interest. However, to avoid and settle the dispute and for maintaining harmonious relations, the defendants along with Parbhu son of Khubi gave their agricultural land of village Fatehpuri in exchange of the disputed land to the plaintiffs about 13 or 14 years back which had been accepted and admitted by the plaintiffs and the plaintiff is in possession of the land of village Fatehpuri on account of exchange of land of village Daruhera and thereafter on the basis of exchange plaintiff is not the owner of the disputed land and that he had been accepted and admitting the defendants as owner of the disputed land

> and further plaintiff is estopped from filing the suit by his act and conduct and besides that the suit is bad on account of non-joinder of Parbhu and that plaintiff is under no circumstances is owner of the suit land and is not entitled to grant of decree of possession thereof".

[4]. On the basis of the pleadings in the aforesaid suit, the Civil Court framed six issues, out of which Issues No. 1 and 3-A have material bearing on the present *lis* and the same were to the following effect:-

> "1. Whether the plaintiff is the owner of the land in dispute?OPP
>
> 3-A: Whether the suit land was received by the defendants from the plaintiff in exchange?OPD".

[5]. While deciding Issue No.1, learned Civil Court held that the plaintiff, i.e., Mata Din "is owner of the suit land".While deciding Issue No.3-A, it concluded that "the suit land was received by the defendants from the plaintiff in exchange and the issue is, therefore, decided accordingly in favour of the defendants". In view of the findings returned by it under Issue No.3-A, the civil Court dismissed the suit vide judgment and decree dated 4th February, 1974 which was further upheld by the first Appellate Court also. Thereafter, Mata Din filed Regular Second Appeal No.113 of 1978 in this Court which too was dismissed on 11th July, 1986 with the following findings:-

> "In view of the above, there is no escape from the conclusion that transaction of oral exchange of immovable pr0operty of any value could be effected without a registered document. The moment the

> property had been so exchanged, the plaintiff lost his title to the exchanged property and was, therefore, not competent to maintain his suit for recovery of the possession thereof. The Courts below have rightly dismissed the suit of the plaintiff". (Emphasis applied)

[6]. There is no dispute that the aforementioned judgments have already attained finality.

[7]. The defendant-respondents of the afore-stated previous suit, namely, Prabhu and others are the plaintiffs of the present suit. It is in the above noticed factual backdrop that they filed the present suit for declaration to the effect that they are owners in possession, as per their respective shares specified in Schedule "B" appended with the plaint regarding agricultural land measuring 90 Kanals 19 Marlas situated in the revenue estate of village Daruhera, District Rewari.

[8]. Both the Courts below, relying upon the judgments passed in the previous suit between the parties, referred to above, have concurrently held that since Mata Din's suit claiming possession over the land situated at Daruhera was dismissed and while dismissing his Regular Second Appeal, this Court had further held that there was an exchange of title between the parties, the defendant-appellants have no right, title whatsoever in respect of the land situated at Daruhera as by virtue of the oral exchange, they have got the land situated within the revenue estate of village Fatehpur Pipa.

[9]. Aggrieved, the defendant/appellants have preferred this Regular Second Appeal.

[10]. Shri Akshay Bhan, learned counsel for the appellants has raised two fold submissions. Firstly, it is contended by him that in the previous

suit, Issue No.1 was decided in favour of Mata Din and he was held to be owner of the subject land. It is, thus, argued that the inference drawn by the Courts below as if the respondent-plaintiffs have become owners of the subject land on the basis of an oral exchange, is misconceived and contrary to the findings in the previous suit. His second contention is that the suit filed on 24th January, 1997 by the respondent-plaintiffs is barred by limitation.

[11]. After hearing learned counsel for the appellants, I do not find any merit in this appeal. As far as Issue No.1 of the previous suit is concerned, the same has to be read in conjunction with Issue No.3-A. Before deciding the validity of the "oral exchange" between the parties, the Civil Court was required to determine as to whether the parties to the said exchange were owners of their respective lands or not. The finding under Issue No.1 will have to be read and seen in that context only. There can be no doubt that before the parties entered into an "oral exchange", Mata Din was owner of the subject land situated at Daruhera. However, in view of the findings returned by the civil Court in the previous suit, he acquired ownership and possession over the land in village Fatehpur Pipa whereas Prabhu and others acquired ownership and possession over the land situated at village Daruhera. This is what was precisely held by this Court while dismissed Regular Second Appeal No.113 of 1978 filed by Mata Din. Thus, no exception can be made to the fact findings returned by both the Courts.

[12]. As the contentions raised on behalf of the appellants are directly in conflict with the issues decided in the previous suit *inter-se* parties, these pleas are not maintainable and are barred by the principles akin to *res-judicata*.

[13]. So far as the issue of limitation is concerned, it is well settled that it is a mixed question of law and fact. No doubt, the said issue was pressed by the appellants before the trial Court. However, a perusal of the judgment dated 30th November, 2005 passed by the learned first Appellate Court reveals that the same was not pressed and deemed to have been given up. The appellants, thus, can not be permitted to revive and raise the said issue in this Regular Second Appeal. That apart, learned trial Court while deciding Issue No.5 which pertains to limitation, has held and rightly so that the respondent-plaintiffs who have already been held owners in possession of the suit land by the Civil Court in the previous suit, could file the present suit only when there was some actual threat by the defendants to their title and/or possession. Thus, the suit having been filed only when such an occasion arose, it can not be said that the same is barred by limitation.

[14]. Consequently, I do not find any merit in this appeal which is accordingly dismissed.

September 08, 2006. **(SURYA KANT)**
dinesh **JUDGE**